Remarks

The Present Invention and the Pending Claims

The present invention relates to a sanitizer composition having improved surface retention. The composition, which has a viscosity of from about 3cP to about 1500cP at 23 degrees C, contains an organic peracid antimicrobial agent, such as peracetic acid, and a retention aid comprising specific amounts of a biopolymer thickening agent and a surfactant.

Claims 37-53 are currently pending. Reconsideration and allowance of the pending claims is respectfully requested.

Summary of the Office Action

Claim 42 is objected to because "perchlorates" in claim 42, line 3 is misspelled.

Renumbered claims 50, 52 and 53 are objected to because the dependencies of the renumbered claims do not reflect the renumbered claims 49, 51 and 52.

The specification is objected to for failing to provide an antecedent basis for the "about 1:1" ratio recited in claim 47, line 3.

Claims 37, 39, 40, 42 and renumbered claim 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Hutchings (U.S. Patent No. 4,861,514).

Claims 37, 39, 40, 43 and renumbered claim 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanaka (U.S. patent No. 4,500,441).

Claims 37, 39 40, 41 and renumbered claim 49 are rejected under 35 U.S.C. 102(e) as being anticipated by Asgharian (U.S. Patent No. 6,316,506).

Claims 37-43 and renumbered claims 48-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Hei et al. (U.S. patent No. 6,663,902).

Claim 44 and renumbered claim 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hei in view of Gutzmann et al. (U.S. Patent No. 6,183,807).

Claims 37 through renumbered claim 53 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1-19, 31-35 of U.S. Patent No. 6,828,294 in view of Hei.

Amendments To The Specification And Claims

Claim 42 was objected to because "perchlorates" in claim 42, line 3 was misspelled. In response, claim 42 has been amended and perchlorates are no longer included.

Renumbered claims 50, 52 and 53 were objected to because the dependencies of the renumbered claims did not reflect the renumbered claims 49, 51 and 52. Claims 50, 52 and 53 have been amended to show them dependent on claims 49, 51 and 52 respectively.

The specification was objected to for failing to provide an antecedent basis for the "about 1:1" ratio recited in claim 47, line 3. The specification has been amended to include this limitation.

Claim 37 has been amended to point out more particularly and claim more distinctly the present invention. As amended claim 37 is limited to organic peracid antimicrobial agents. Such antimicrobial agents are not described in any of the references cited by the Examiner in the rejections discussed below. Although there are numerous other distinctions between the present invention and the teachings of the references cited by the Examiner this amendment should be sufficient to distinguish the claims over these references. Applicants reserve the right to file additional divisional applications directed to compositions containing the other antimicrobial agents described in the present application.

Claims 37, 39, 40, 42 and renumbered claim 49 were rejected under 35 U.S.C. 102(b) as being anticipated by Hutchings. In response, claim 37 has been amended as indicated above. MPEP section 2131 provides, in pertinent part: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. ....The identical invention must be shown in as complete detail as is contained in the claim". Hence, Hutchings does not anticipate amended claim 37, or dependent claims 39, 40, 42 and renumbered claim 49. Accordingly, Applicants respectfully submit that amended claim 37 and dependent claims 39, 40, 42 and renumbered 49 are novel under 35 U.S.C. 102(b) over Hutchings, and requests reconsideration and withdrawal of the rejection.

Claims 37, 39, 40, 41 and renumbered claim 49 were rejected under 35 U.S.C. 102(e) as being anticipated by Asgharian. In response, claim 37 has been amended as indicated above. Asgharian does not anticipate amended claim 37, or dependent claims 39, 40, 41 and renumbered claim 49. Accordingly, Applicants respectfully submit that amended claim 37 and dependent claims 39, 40, 41 and renumbered 49 are novel under 35 U.S.C. 102(e) over Asgharian, and requests reconsideration and withdrawal of the rejection.

Claims 37, 39, 40, 43 and renumbered claim 49 were rejected under 35 U.S.C. 102(b) as being anticipated by Tanaka et al. In response, claim 37 has been amended as

indicated above. Tanaka et al. does not anticipate amended claim 37, or claims 39, 40, 43 and renumbered claim 49 that are dependent on claim 37. Accordingly, Applicants respectfully submit that amended claim 37 and dependent claims 39, 40, 43 and renumbered 49 are novel under 35 U.S.C. 102(e) over Tanaka et al. and requests reconsideration and withdrawal of the rejection.

Claims 37-43 and renumbered claims 48-51 were rejected under 35 U.S.C. 102(e) as being anticipated by Hei et al. In response, claim 37 has been amended as indicated above. Hei et al. does not anticipate claim 37, and dependent claims 38-43 and renumbered claims 48-51. Accordingly, Applicants respectfully submit that amended claim 37 and dependent claims 38-43 and renumbered claims 48-51 that are dependent on claim 37 are novel under 35 U.S.C. 102(e) over Hei et al. and requests reconsideration and withdrawal of the rejection.

Claims 44 and renumbered claim 45 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hei, as above, further in view of the descriptions of surfactants contained in Gutzmann. As indicated above Hei does not disclose the composition of the present invention. Substituting the surfactant described in Gutzmann into the composition of Hei would not result in the composition of claims 44 and 45, even if there was some reason to do so. MPEP section 2142 states: "To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the reference teachings. Second there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." Applicants respectfully submit that claim 44 and dependent renumbered claim 45 are not obvious over the cited references, and Applicants request reconsideration and withdrawal of the rejection.

Claims 37 through renumbered claim 53 were rejected on the ground of non-statutory obviousness-type double patenting over claims 1-19, 31-35 of U.S. Patent No. 6,828,294 in view of Hei. The present application is a divisional of application 10/213, 027 which issued as US 6,828,294. See the reference inserted in the present application by Applicant's Preliminary Amendment filed with the present application The present claims were withdrawn from that application following a Restriction Requirement by the Examiner. Accordingly, it is submitted that the double patenting rejection is improper and should be withdrawn. In any case since both this application and US 6,828,294 have the same effective filing dates both patents will expire on the same date.

Conclusion

Applicants respectfully request that a Notice of Allowance be issued in this application. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this application, the Examiner is requested to call the undersigned.

Respectfully submitted,

April 13, 2006

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